

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

CATHCART V. TOWNE

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

SARAH CATHCART, APPELLEE,

V.

DEREK J. TOWNE, APPELLANT.

Filed May 11, 2010. No. A-09-594.

Appeal from the District Court for Buffalo County: WILLIAM T. WRIGHT, Judge.
Affirmed.

Sophia M. Alvarez, of Yeagley, Swanson & Murray, L.L.C., for appellant.

Vikki S. Stamm, of Ganz, Romatzke & Stamm, P.C., L.L.O., for appellee.

INBODY, Chief Judge, and MOORE and CASSEL, Judges.

MOORE, Judge.

INTRODUCTION

The Buffalo County District Court entered a modified protection order in favor of Sarah Cathcart and against Derek J. Towne. Pursuant to our authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), we have ordered this case submitted for decision without oral argument. Towne now appeals, and we affirm.

BACKGROUND

Cathcart and Towne were in a relationship, lived together for a period of time, and have a child together. They separated in March 2009. On May 8, 2009, Cathcart filed a petition and affidavit to obtain a harassment protection order. An ex parte harassment protection order was entered on May 11. Towne timely requested a hearing to show cause why the order should not remain in effect.

At the hearing on May 19, 2009, Towne appeared with his attorney. The trial judge stated, "I will tell you, [counsel], typically in these hearings I do not allow a lot of participation

by counsel.” Towne’s attorney responded, “Okay.” The trial judge then addressed the procedure he would follow to conduct the hearing, stating that he would put the parties under oath and ask each of them questions himself. He stated that if a party had a question for the other party, he or she could “address those questions through [the court].” Towne’s attorney again responded, “Okay.” The trial judge then questioned Cathcart, after which the trial judge asked Towne, “[A]re there any questions that you want me to ask . . . Cathcart at this particular point in time, to clarify any issue?” Towne responded, “Not that I can think of.” The trial judge then questioned Towne. At the conclusion of the hearing, the trial judge offered the parties a final opportunity to be heard when he asked, “[Is there a]nything else [that] either one of the parties want to say?” Neither party responded affirmatively.

The same day, the court entered a modified harassment protection order to allow the parties to communicate through Towne’s mother with respect to visitation for the parties’ son. The modified order was ordered to remain in effect for 1 year from the date of the original order entered on May 11, 2009.

Towne timely filed this appeal.

ASSIGNMENTS OF ERROR

Towne asserts that the trial court erred when it violated his constitutional right to due process by precluding his attorney from participating in the protection order hearing.

STANDARD OF REVIEW

A protection order is analogous to an injunction. On appeal, the granting or denial of an injunction is reviewed de novo on the record. In a de novo review, an appellate court reaches conclusions independent of the factual findings of the trial court, but where the credible evidence is in conflict on a material issue of fact, the appellate court considers and may give weight to the circumstances that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another. *Cloeter v. Cloeter*, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

ANALYSIS

Towne asserts that the trial court erred when it violated his constitutional right to due process by precluding his privately retained attorney from participating in the protection order hearing. Assuming without deciding that Towne has a due process right to participation of counsel in a protection order hearing, we conclude that such right was extended to Towne. While the trial judge stated at the beginning of the hearing that he did not typically allow “a lot” of participation by counsel, there is no indication that Towne’s attorney was precluded from participating in the hearing. Towne’s attorney did not request to cross-examine Cathcart or adduce additional testimony from Towne or any other witnesses. Twice during the hearing, the court gave Towne the opportunity to further inquire of Cathcart or offer further evidence on his own behalf and Towne declined. We also note that neither Towne nor his counsel objected to the court’s proposed procedure at the time of the hearing, but, rather, Towne’s attorney indicated her acquiescence thereto. Accordingly, we find Towne’s argument to be without merit. Because Towne has not otherwise assigned error to the continuation of the protection order, as modified, we affirm the district court’s order.

CONCLUSION

For the foregoing reasons, we conclude that the trial court did not err when it continued the protection order in this case. Accordingly, we affirm.

AFFIRMED.